8P5-33/23

ESTABLISHED as a first instance civil court through judge Jovanka Spirov\_snaeva, as President of the council and lay judges Natasha JosifoVska-Simonovska and Aleksandra Sazdova" as members of the council, acting upon the lawsuit of the plaintiffs Kocho An{ushev from Skopje, ul. Lerinska no. 11-a and the Company for Production, Trade and Services Brako DOO import-export Veles ul. Rashtanski pat, against the defendants Sashka Cvetkovska from

Skopje, ul. Rokomija no. 6ZA and Association of INVESTIGATIVE REPORTING LABORATORY - irl Skopje ul. Aminta treti no. 16/2, for determining liability for defamation and compensation for damage, value of the dispute 120.00 den., after the main, public and oral hearing held, concluded on 13.10.2023 in the presence of the plaintiff personally for herself and as a legal representative and their attorney attorney Meri Mladenovska YURIEVA, professional associate Monika Efremovska with a deputy power of attorney of attorney Meri Mladenovska Georgievska and the defendant personally for herself and as a representative, with their attorney attorney Lazar Sandev, with a deputy power of attorney of attorney Filip Medarski, on 24.10.2023, after deliberation and voting, adopted and announced the following:

# VERDICT

The claim of the plaintiffs Kocho Anushev from Skopje and the Company for Production, Trade and Services Brako DOO import-export Veles, is ADOPTED.

IT IS ASSERTED that the defendants Saška Cvetkovska from Skopje and the Association of Citizens INVESTIGATIVE REPORTING LABORATORY - IRL Skopje are liable for defamation committed against the plaintiffs, in a way that in the show "Conspiracy against the Air" episode 1, broadcast on MRTV program 1, on 16.05.2021 from 20.10 to 20.50, they presented untrue facts with the intention of harming their honor and reputation, by publishing the fact that the plaintiff Kočo Ang'ushev, as one of the largest businessmen in Macedonia and Deputy Prime Minister for Economy, introduced two entities, i.e. late at night in the Government building in his office he met with Izudin Ahmeti from Hifa OIL and Ilija Strezovski from Eurotim, after which meeting Hifa OIL and Eurotim gained two new clients, namely Brako, Kočo Ang'ushev's company and Feni Industries, or today's Euronickel, as well as by announcing the fact that the biggest clients of Euroteam and Hifa OIL are not Macedonian hospitals and Macedonian institutions, but the former Feni Industries from Kavadarci, or today's Euronickel, and by stating that from this it can be concluded that private interest was much greater than public interest, that is, the profitable companies are the ones who had the greatest interest in buying and supplying the fuel oil, because out of 18 million euros in revenue, only 2.9 million went to state institutions, and the rest is in the private sector, of which the largest shareholder is Euronickel, or Feni Industries, expressing the conclusion that when the money and profits of a small and well-connected clique of Ke become more important and prioritized than the constitutional right to breathe clean air and live in a healthy environment, then the country stinks, stating that they are not only thinking about fuel oil, and—at one point they wrote on the screen the words "Kocho did not respond to calls of IRL", and each of the defendants is ordered to pay each of the plaintiffs an amount of 60.00 denars as compensation for damage for violation of honor and reputation, and is ordered to publish the ruling in the newspaper Sloboden Pechat in a space of no less than 1/8 of the page, from the first to the fifth page of the newspaper, and all within 15 days after receipt of this decision, under fear of forced execution.

The defendants are ORDERED to jointly and severally reimburse the plaintiffs for the costs of the procedure in the total amount of 30,437.00 denars, within 15 days after receipt of the decision, under fear of forced execution.

# Explanation​​

The plaintiffs Kocho Aneushev from Skopje and the Company for Production, Trade and Services Brako DOOEL import-export Veles filed a lawsuit with this court on June 17, 2021, in which they stated that the defendant Sashka Cvetkovska from Skopje, in her capacity as a journalist and author of the show prepared by the defendant Citizens' Association RESEARCH REPORTER'S LABORATORY - IRL Skopje, on MRTV 1 television channel, on May 16, 2021, broadcast a show entitled Conspiracy against Air in which they presented untrue facts about the plaintiffs in the sense that the plaintiff Kocho Aneushev was directly involved in the procurement of fuel oil that was not of adequate quality, and which was used as energy by hospitals, state institutions and industrial facilities such as Feni and the plaintiff Brako, and throughout the entire time in the show the narrative was as if The plaintiff is one of the biggest air polluters in the Republic of Macedonia, and they linked him to the individuals Izudin AhmetiK from the Hifa OIL group from Bosnia and Ilija Strezovski from Euroteam, stating that he actually brought the two together and enabled the import of the contaminated fuel oil into the Republic of Macedonia. With such actions, the defendants have damaged the honor and reputation of the plaintiffs, because they presented untrue facts, so they requested the court to issue a judgment establishing that they committed defamation and ordering the plaintiffs to pay them an amount of 60.00 denars each as compensation for damages, as well as ordering them to publish the judgment in the newspaper Sloboden Pečat.

In a written submission dated 29.09.2021, the plaintiffs specified the claim in the part in which it is alleged that the defendants committed defamation by presenting untrue facts, so they requested the court to establish that in the show they broadcast on 16.05.2021, they presented an untrue fact that late at night in the Government building in the office of the plaintiff Kocho An{ushev as Deputy Prime Minister for Economy, he met with the persons Izudin AhmetiK from Hifa OIL and Ilija Strezovski from Euroteam, after which after this event the company Brako was a client of the fuel oil they traded with, as well as Feni Industries, and that in the show they expressed the conclusion that private interest is much greater than public interest, that out of 18 million euros in revenue, only 2.9 million fell to state institutions, and the rest was in the private sector , while they concluded that the largest buyer of fuel oil was Feni Industries that mean the profit of a small group of people have become more important than the constitutional right of citizens to breathe clean air.

The defendants, in a written response to the lawsuit and at the hearing, contested the lawsuit in its entirety. They stated that the program in question, in which the plaintiffs claim that defamation was uttered, was prepared over a long period of time, that the research conducted by the defendants in connection with the determination of the sources of air pollution in the Republic of Macedonia revealed that contaminated fuel oil is used by the Brako Company, which is not an untrue fact, and they also found evidence that in the office of the plaintiff Kocho Aneushev, he had a meeting with the persons who imported the contaminated fuel oil, which is also not an untrue fact, so that the defendants are not liable for defamation. In addition, this is investigative journalism, where the defendants have adequate evidence for each allegation made in the show, the facts presented in the show have been verified by an appropriate fact-checker, and it was a show that dealt with topics of public interest, so it is impermissible and contrary to the Law on the Claims and Opinions of Journalists to be punished for defamation, because that would be a restriction on freedom of expression. This is all the more so since the show in question caused reactions in the public and among the competent institutions, which, after the checks carried out, determined that contaminated fuel oil was indeed being imported, which affects the environment. For this reason, they proposed that the lawsuit be dismissed as unfounded.

Acting on the claim, the court issued judgment P5-4Z/21 of 07.03.2022, rejecting it as unfounded and ordering the defendants to reimburse the costs of the procedure. MefYToa, by decision of the Court of Appeal Skopje RK-2926/22 of 07.04.2023, the higher court overturned the above-mentioned verdict and returned it to the first instance court for retrial with remarks and instructions that the court should conduct a more critical analysis of the evidence, reassess the evidence, review the fact whether, before deciding to broadcast the show on a public media outlet, the defendants requested a statement from the plaintiffs in the part of the show that concerned them, evaluate the statement of the witness Sofka Jovanovka, who was present at the meeting in question at which the defendants claim that agreements were made regarding the purchase of the toxic fuel oil, as well as reassess the fact whether at the time the show was broadcast the plaintiff held a high political office and had to endure a greater degree of serious criticism.

Acting on the observations and instructions of the Court of Appeal Skopje, and primarily for the purpose of clarifying the disputed issues referred to, the court allowed and presented the proposed evidence, by inspecting the confirmation of the University of Saints Cyril and Methodius Skopje - Faculty of Mechanical Engineering No. 04-819/1 dated 09.06.2021, confirmation of the Government of the Republic of Macedonia No. 04-2/42 dated 09.06.2021, a copy of data on the defendant's website dated 03.06.2021, notification of the Association of Businessmen Business Center JelakPešanj BiH submitted to the Government of the Republic of Macedonia No. 021/19 dated 27.02.2019, request from the Ministry of Agriculture, Forestry and Water Management No. O2-566Z/1 dated 22.05.2019 registered with the Government of the Republic of Macedonia under No. 09-Z941/1-0 dated 23.05.2019, notification of a member of a working group submitted by the plaintiff Kocho An{ushev as Deputy Prime Minister to the Government of the Republic of Macedonia No. 09-Z941/9 without

legible date, extract from the records of the Government Cabinet for scheduled meetings for 13.02.2019, telephone message from the defendants to the plaintiff dated 01.02, specification of calls to the phone number of Fero Invest dated 01.02.2021, request for a response to the alleged denial and request for an apology from the plaintiff to the defendant dated 18.05.2021 delivered by registered mail dated 18.05.2021, copies of three posts on the FB page of the person Zoran Velkovski, posts on the website of Deutsche Welle in Macedonian dated 21.05.2021, posts from the website of Deutsche Welle in Macedonian dated 27.05.2021, website of Deutsche Welle in Macedonian dated 24.05.2021, post on the Internet portal Radio Mov dated 11.06.2021, announcement on the Internet portal Radio Mov from 25.06.2021, announcement from the Internet portal 360 degrees from 11.06.2021, decision of the Appeals Commission before the Ethics Council of the RSM No. 244/0З06 from 09.06.2021, response to a complaint from the plaintiff Kocho An{ushev to the defendant Sashka Cvetkovska from the Council of Honor from 23.06.2021, review of calls from the defendant's phone for the period from 30.01.2021 to 02.02.2021, transcript of part of a conversation conducted in the disputed show that is the subject of the lawsuit, expert finding and opinion of expert Zoran MitiK from 17.06.2021, transcript of the disputed show Conspiracy against the Air, transcript from the person S.T.-Sasho Tasevski from a parody show, upon the consent of the parties, read the statement of the witness Sofce Jovanovska given in the minutes of 25.02.2022, read the statements of the parties given in the minutes of 25.02.2022 and, in addition to the disputed facts, conducted an additional interrogation, as well as presented evidence by confrontation, after which he concluded the main hearing, and after evaluating this evidence, conducting a more critical analysis of it, evaluating each piece of evidence separately and all the evidence together, and all this due to the instructions of the Skopje Court of Appeal, he determined the following factual situation:

The plaintiff Kocho Aneushev is a university professor at the Faculty of Mechanical Engineering in Skopje, and in the period from 31.05.2017 to 02.01.2020 he served as Deputy Prime Minister of the Republic of Macedonia in charge of economic issues and coordination with economic departments.

The plaintiff, the production company Brako DOO import-export Veles, is a legal entity, a limited liability company registered in the Registry of the Republic of Macedonia, and the owners of this company are the production, trade and services company Fero Invest DOO export-import Veles and the company for the employment of disabled people Trgofer DOO export-import, and the main activity of the plaintiff is the production of wire products, chains and springs. The plaintiff's subsidiary registered as the subsidiary Brako store 1 in Veles is registered with a priority activity of retail trade in motor fuels and lubricants in specialized stores. One of the owners of the plaintiff Brako, the company Fero Invest, is registered with a priority activity of wholesale trade in machinery and equipment. The plaintiff is one of the owners of the company Fero Invest and is its manager, and is also an authorized person of the plaintiff Brako DOO import-export Veles.

The defendant Citizens' Association RESEARCH REPORTING LABORATORY - IRL Skopje is a registered legal entity in the relevant register of associations and unions in the RSM Regional Office on 19.12.2017, with undefined ownership, eight owners are registered, meaning members of the association they founded, with a priority activity - activities of other organizations on a membership basis . There is no supervisory body registered in the register, which means that it is not an organization of public interest , i.e. this association does not have the status of a civil organization of public interest. The association does not have the status of a media outlet, as a means of information, in accordance with the Law on Media, and the members do not have the status of journalists, nor can they, for the purpose of informing the public, conduct journalistically shaped programs, present themselves as journalists or engage in the genre of investigative journalism and publish all of this through the media.

The defendant Saška Cvetkovska is one of the owners, i.e. the founders of the defendant Citizens' Association and is its authorized person, and is registered as the president of the Association, although according to the Law on Associations and Foundations, she only represents the representative of the Association. She does not have the status of a journalist in the Association, so she cannot appear in the programs that are recorded there, neither as an editor nor as a journalist, because such programs are not considered a journalistic product. She is a journalist by profession, but in this case she is only a member of the Citizens' Association and can only undertake those actions, like the other members, only in order to achieve the goals for which the association was formed.

In the RSM Central Register, in the current state of the association, in the additional information column, it is stated what are the additional goals of the association for which it was formed, which are the development of investigative and analytical journalism in synergy with technological experts, the community, bloggers and users of social networks; increasing the impact of investigative and analytical journalism through innovation in content creation and access to the audience and thereby increasing trust in the media; involving young people in creating standards and content in investigative journalism through involvement in the work of the association, testing models for sustainability and development of organizations that monitor corruption and crime that are consequences of vulnerable democracies that fail to implement the principles of the rule of law, and other goals include promoting media freedom, protecting and exercising the rights of journalists working in the field of investigative journalism, and practical education of young professionals from journalism studies. Apart from these additional objectives of the Citizens ' Association registered in the Central Register, the court could not determine whether the defendant's Statute provides for any activities to achieve those objectives, because the defendants did not provide such evidence, so the court could not determine whether the recording of shows within the Association, and then the publication of such a show through a means of public information, constitutes their activity as such in the Statute. Also, the defendant did not provide evidence from the competent Ministry of Justice, which should supervise the application of the provisions of the Law on Associations, in order to determine whether the activity carried out by the Association in the manner in which it does so is their prescribed activity in the Statute.

The defendant Citizens' Association IRL and the defendant Saška Cvetkovska as its president, and another group of members, posing as journalists, that is, the defendant Cvetkovska as editor, after their formation, began working on researching the problem of air pollution in the Republic of Macedonia, which leads to environmental pollution, with the intention of investigating where the danger arises from and the sources that cause air pollution. They conducted the research over a period of 2 years,

obtaining data on the knowledge they had obtained, as well as collecting evidence in connection with that knowledge. Having learned that in most cases the pollution is carried out by the use of M$ in a large number of state institutions, hospitals, schools and other institutions, they began researching which company imports and distributes the fuel they consume, and came to the conclusion that the fuel oil is imported by the company Evrotim from Kicevo. Taking an interest in this company, they determined that it was registered in 2015, that it was owned by the person Goce Stefanovski from Kičevo, who is also the manager of the company, but during the research and inspection of the contracts for the supply of fuel oil to Macedonian Railways JSP Skopje, they came to the realization that the contracts were signed by a person named Ilija Strezovski, who also had a company for trading in oil derivatives, but his license was revoked, and they discovered a connection between this person and the owner of Evrotim, i.e. they came to the realization that Goce Stefanovski is the son-in-law of Ilija Strezovski's daughter. They managed to get in touch with the person Goce Stefanovski and during the investigation they came to know that the main supplier of fuel oil to the company Evrotim is the company Hifa OIL from Bosnia, which is owned by the person Izudin Ahmeti, so they actually concluded that through this company from Bosnia, fuel oil is purchased in Macedonia through the company Evrotim, and then this fuel oil is distributed to state institutions and private companies. Investigating this method of purchasing and distributing fuel oil, they came to know that it is purchased at a lower price, and that it arrives in Bosnia from a Czech company and that it is a dangerous oil that causes serious consequences for people 's lives and their health. This oil was treated as waste in a large number of countries and was not put into use, however, when imported into Macedonia, the oil was imported as fuel oil, which means as oil that is not polluted and can be used. Accordingly, the subject of the defendants' investigation was to determine the source from which the contaminated fuel oil is imported into Macedonia, which then causes air pollution through its use, while the plaintiff Kočo Angjušev and the Brako LLC Veles Company were not subject to analysis and research at all. They then edited this information, which they obtained by collecting evidence and recording interviews, sometimes with a hidden camera, into a recorded show.

The defendants interviewed the person Goce Stefanovski from Kicevo as the owner of Evrotim, who said in the interview that the fuel oil they import from Hifa OIL is supplied to Feni from Kavadarci and Brako from Veles, and when asked how this company managed to supply large industrial capacities, he said that it was because of Ilija's acquaintance with the plaintiff and his partners. Having obtained such information, the defendants, through a request for information that is available to the public, requested from the Government to receive notification of whether there had ever been any meeting between the plaintiff Kocho, the person Izudin Ahmetik and Ilija Strezovski, and they were informed that such a meeting had indeed taken place in the Government. In doing so, without considering and without verifying what that meeting was about, even though the person Ilija told them that he did not know the plaintiff, they established a wrong fact, that in fact at that time, the plaintiff was concluding deals for the purchase of toxic fuel oil even though the topic of the meeting was organizing a fair. They also stated this in the show, even though they did not previously ask the plaintiffs for their opinion, that is, they did not verify this by taking a statement from them.

After the defendants produced such a show, although it was supposed to serve only for the realization of their members' interests, they broadcast it to the public through the public information service of MRTV, under the title "Conspiracy against the train" on May 16, 2021, from 8:10 p.m. to 8:50 p.m., in which they also presented untrue facts about the plaintiffs, with the intention of harming their honor and reputation. At the beginning of the show, the defendant Saška Cvetkovska, President of the Association, is listed as the editor of the show, although it is not editorially shaped content within the meaning of the Media Law, and the other members of the Association who took statements from certain people also presented themselves as journalists, although the Association of Citizens IRL is neither a journalistic association nor an association registered for journalistic reporting and publishing information. in public information media. The show ends with the statement that the investigation is ongoing, which indicates the intention of the defendants to continue preparing such shows within their association and instead of those shows serving to educate their members, it is obvious that they intend to re-release them to the public through some public information media.

The show in question caused a stormy reaction in the public, in

In the sense that it was harassed, and the plaintiffs' honor and reputation were violated, the right to respect for the private and family life of the plaintiff Kocho An{ushev was violated, i.e. his personal rights to honor and reputation were violated, as well as the rights of the plaintiff Brako DOO import-export in the sense of violating their reputation in the business community, which rights are protected by Law.

After the broadcast of the subject program, the plaintiff filed a complaint and appeal with the Media Ethics Council in Macedonia, which, although it was not competent to inspect the work of the civic association, decided that the complaint was unfounded. Also, the Council of Honor of the Association of Journalists in Macedonia, to which the plaintiff filed a complaint against the defendant Saška Cvetkovska, made a decision, i.e. a response in which it determined that the complaint was unfounded, if the defendant Cvetkovska did not have the capacity of a journalist in the subject program. The Association of Journalists, which is also registered as an association in accordance with the Law on Associations and Foundations, does not have the competence to inspect the work of another association, because the supervision of their work is carried out by the Ministry of Justice.

Otherwise, at the time of the broadcast of the program through the media, the plaintiff Kocho Ant'ushev was not performing any public function.

The court established the above-mentioned factual situation from the evidence presented.

evidence of the argument, namely:

From the inspection of the attached confirmations of the Faculty of Mechanical Engineering of Saints Cyril and Methodius and the General Secretariat of the Government of the Republic of Macedonia, and as undisputed, the court established the fact that the plaintiff Kocho Aneushev is a professor at the Faculty of Mechanical Engineering, and in the period from 31.05.2017 to 02.01.2020 he held the position of Deputy Prime Minister of the Republic of Macedonia in charge of economic issues.

From the inspection of the current state of affairs in the RSM dated 11.06.2021, the court determined that the plaintiff B ako DOO uvoz-)1 z Veles has a priority activity of production of wire and products, springs and springs and that the owners are Fero Invest from Veles and Trgo Fero port-import Veles, and its authorized person is the plaintiff Kocho Anguschev

From the inspection of the current status of the RSM's CR dated 20.04.2021, the court determined that the Fero Invest Company, which is one of the owners of the plaintiff Brako, is registered as a protective company, that one of the owners and manager thereof is the plaintiff Kocho Aneushev, and that the company is registered with a priority activity of wholesale trade in machinery and equipment.

From the insight into the current state of the RSM CR as of 01.06.2021, the court determined that the defendant IRL Skopje is registered in the Register of Associations and Unions, that the defendant Saška Cvetkovska is one of the founders of this association and as its president is an authorized person. From this evidence, the court determined the fact that the type of ownership of the association is undefined, that the priority activity is the activity of other organizations based on membership, and from the column of additional information listed in the Register, the court determined what are the goals for which this association was formed, as listed in the factual situation. In addition, the court determined that in the current state there is no information registered that this association has a supervisory body, which means that in accordance with Article 41 paragraph 4 of the Law on Associations and Foundations, it is not an organization that has the status of public interest. Namely, according to the aforementioned Law under which the defendant Association was registered, according to Article 3 of the same, it is stipulated what constitutes the purpose of the organization, i.e. as stated in point 18, the purpose of the organization is a projected result or state that the organization should achieve. According to Article 18 of this Law, the defendant association should also have a Statute, which was not submitted to the court and it was not possible to assess it, but, according to that provision, the Statute should regulate the purposes of the association and the activities by which those purposes are achieved. Given that the Statute was not submitted as evidence, the court, as stated in the factual situation, could not determine whether such conduct of the defendants, i.e. the preparation of a recorded broadcast that should be of importance to the members of the association, has the possibility and is permitted to be released to the public through a means of information. However, in any case, this court is not competent to assess this in this procedure, because in accordance with Article 58 of the Law on Associations and Foundations, supervision over the legality of the application of the provisions of the Law on Associations and Foundations should be carried out by the Ministry of Justice. Accordingly, the court presented as evidence and assessed the complaints that the plaintiffs submitted to the Journalists' Association, and the Journalists' Association decided on them, but found that this evidence was irrelevant and without significance in the specific case, in conditions where the court determined that the Journalists' Association as an association cannot supervise another association, but that another body in the state is competent for that. In any case, the defendant Association has probably foreseen in its Statute what actions it can take to achieve its goals, because in the event of possible supervision by an authorized body, and in accordance with Article 65 of the above-mentioned Law, the work of the civil organization may be prohibited, if, among other things, their actions violate the freedoms and rights of other persons.

In most of the facts, this situation was determined by the court as stated above, resulting from the content of the subject program entitled "Conspiracy against the Air", since it was established as an indisputable fact that it was broadcast through a means of public information, namely a public service, MRTV program 1 on 16.05.2021 in the period from 20.10 to 20.50. Moreover, from the direct inspection of the court by directly watching the show, it was concluded that it was made in the form of a documentary show in which interviews were given by several people, supplemented by comments by the team consisting of members of the Association, and it was concluded that everything shown in the show is identical to the submitted transcript of the same, which the court presented as evidence. It is clear from the recording of this show that in it, the defendant Cvetkovska is shown as an editor, and the people who conducted the interviews presented themselves as journalists, and the entire show is presented as if it were a journalistic product in the field of so-called investigative journalism.

When analyzing the above-mentioned evidence within the established factual situation, the court limited itself to determining whether the facts that the plaintiffs claim to be untrue in the claim are true and supported by appropriate evidence, because only facts can be proven by appropriate evidence. Thus, the court primarily limited itself to whether there really was a meeting in the Government of the Republic of Macedonia between the plaintiff Kocho Aneushev, the person Izudin AhmetiK and Ilija Strezovski, and determined that such a meeting really did exist, which was confirmed not only by the plaintiff in his statement, but also by the witness Sofce Jovanovska. After the court reassessed the testimony of this witness, and in accordance with the instructions of the Skopje Court of Appeal, evaluating her testimony in conjunction with the other evidence, the court determined that at the meeting she attended, no purchases of fuel oil were discussed at all, but rather the subject of the meeting was the organization of a fair in Bosnia and Herzegovina.

The court appreciated the part of the broadcast in question, as well as the defendant's statement that after this meeting, at which the persons who were engaged in the procurement of contaminated fuel oil were allegedly brought together, the plaintiff Brako DOO import-export became a supplier of such fuel oil, but the defendants did not prove this fact by submitting appropriate evidence and submitting a possible contract that the defendants claimed to possess, from which it can be seen whether and when such purchases were made and whether such purchases are related to the specific meeting of the plaintiff with the aforementioned persons and whether such a purchase was possibly agreed upon at that time.

The court also acted on the instructions of the higher court, and in order to verify the fact whether, before making the facts that are the subject of this lawsuit public, the defendants requested a response, opinion or explanation from the plaintiffs, re-analyzed all the evidence, conducted additional questioning of the parties to these disputed circumstances, as well as their confrontation, so that it determined that before publishing the broadcast in a public information medium, the defendants did not request the plaintiffs, either by telephone or via email communication, to verify the facts that they intended to publish. From the attached listing of the plaintiff's phone, only the fact was confirmed that he responded to an SMS message that he received from the first defendant on 01.02.2019, however, from then until the day of publishing the broadcast, neither from his phone listing nor from the listing of the defendants' phones did the court determine that there was any communication

between them, which indicates that the plaintiff did not know at all that the defendants would publish such a broadcast in a public information medium, nor did he know the content of the broadcast, nor did he know what facts harmful to his reputation would be published. And the \*

The remaining part of the broadcast, i.e. the part of the broadcast where the plaintiff claims that there is defamation in the part where it is stated that private interest takes priority over public interest and that profit companies have the greatest interest in importing such polluted fuel oil, the court assessed that, in the manner in which it was stated with unauthorized insinuations, this is precisely what indicates the defendants' intention to violate the plaintiffs' personal rights, and not to achieve the goals of the association.

The court established as undisputed the fact that the subject broadcast caused great interest in the public and among ordinary citizens, the data presented in the broadcast caused anxiety among citizens, and the plaintiff's private and family life was violated by publishing electronic messages that he would be beaten in front of his home, by receiving threats against him and his children, which upset both his family members and his parents. For these reasons, the court assessed that the presentation of the untrue facts deeply disturbed the plaintiff Kocho Aneushev, he experienced the broadcast emotionally and disturbingly, considering that his reputation and the reputation of his company, as well as his honor, were damaged, which is also confirmed by the expert finding and opinion of the expert Zora MitiK.

From the review of the decision of the Ethics Council of Macedonia No. 244/0З06 of 09.06.2021, the court determined that the plaintiff's appeal was rejected as unfounded, because it was determined that all facts presented in the show had undergone a rigorous verification procedure and that the defendants had appropriate evidence for all the presented facts and therefore were not untrue, as well as from the review of the response to the plaintiff's complaint by the Council of Honor of the AJM, it was determined that the complaint was rejected as unfounded, because no violation of the AJM code of conduct was established by the defendants. However, it remained unclear to the court, despite presenting the evidence proposed in this way, for what reasons the plaintiff submitted a complaint about the work of the defendants to the Association of Journalists, and not to the Ministry of Justice, and even more unclear was the fact that this Association of Journalists engaged in an assessment of the work of another citizens' association, when it is not competent to do so. Accordingly, this evidence could not lead to a different factual situation, nor change the fact that the defendant Citizens' Association IRL is not a journalistic organization, does not have the authority to carry out journalistic reporting, nor did the defendant Sashka Cvetkovska, as a member of that association, exercise a journalistic profession. Namely, in Article 2 paragraph 1 of the Law on Media, which clearly defines what constitutes a means of public information, it is explicitly stated that media, Mefy. the rest. do not constitute associations . According to paragraph 5 of the same legal provision of the Law on Media, the term journalist means a person who carries out activities of collecting, analyzing, processing, shaping or classifying information that is published in a media outlet and is employed by the publisher of the media outlet or has a contract with the same or is a person who performs journalistic activity as an independent occupation (freelance journalist). According to these definitions in the Law, which should be known to the Association of Journalists, it follows that the Association of Citizens IRL does not constitute a media outlet, and the defendant Saška Cvetkovska as a member of that association cannot be considered to be carrying out journalistic activities there. This is so far as the defendant, as the President of the Citizens' Association, has not provided evidence that she is employed by a media publisher or that she carries out journalistic activities as an independent occupation, i.e. a freelance journalist. In the specific case, the public service MRTV appears as the information medium, and it is precisely in this public information medium that the defendants published the facts that the court determined to be untrue for the plaintiffs and thus caused a violation of their rights.

The court also appreciated the statement of the defendant Saška Cvetkovska, but that statement also could not lead to a different factual situation, because in her statement, as well as in the additional statement given, she stated throughout that the show was the result of journalistic research, that the show was editorially shaped, that other journalists also participated in it, so such a statement, appreciated in conjunction with the rest of the evidence, could not change the factual situation, because it is obvious that what she stated is contrary to the purpose for which this association was formed as an Association , and not as an Association for informing the public, i.e. as a means of public information. In that sense, the court found that her statement that all the facts they stated in the show were verified by an appropriate fact-checking organization was irrelevant, because fact-checkers only investigate the truth or falsity of facts that should be published in a journalistic report, that is, to be presented to the public in a report that is journalistically edited, and in this case the defendant Citizens' Association is neither a journalistic association, nor did it need to request verification of the facts that they established in the show, because the show they made can only serve the purposes for which the association was formed, in terms of training or seminars for young journalists, journalism students or other interested members, and not to be broadcast in a public information medium.

In this established factual situation, the court accepted the plaintiffs' claim for the following reasons:

According to Article 9-a of the Law on Amendments and Supplements to the Law on Obligations (Official Gazette of the Republic of Macedonia, No. 84 of 11.07.2008), which article was added to the Law on Obligations precisely for the purpose of harmonizing our legislation with European legislation, our legal system defines what constitutes protection of personal rights. This provision stipulates that personal rights, in addition to others, include the rights to honor and reputation, privacy of the person and family life, as well as freedom, so that every natural and legal person, in addition to the protection of property rights, has the right to protection of their personal rights. This provision of the Law on Obligations actually represents the harmonization and insertion into our legal system of Article 8 of the European Convention for the Protection of Human Rights. Namely, this article of the European Convention, which is located in the chapter on rights and freedoms and is entitled the right to respect for private and family life, provides that everyone has the right to respect for his private and family life, his home and his correspondence. Paragraph 2 of this article states that there shall be no interference by public authorities with the exercise of this right, except if such interference is provided for by law and constitutes a measure which, inter alia, is in the interest of the protection of the rights and freedoms of others and is necessary in a democratic society.

On the other hand, Article 10 of the European Convention on Human Rights regulates freedom of expression, providing that everyone has the right to freedom of expression , which includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Paragraph 2 of Article 10 of the above-mentioned European Convention provides that the exercise of these freedoms, which exercise carries with it obligations and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law when, in a democratic society, such measures are necessary, inter alia, for the protection of the reputation or rights of others.

According to the above, it follows that the right to respect for private and family life, which includes the right to honor and reputation, and the right to freedom of expression, are protected rights at an equal level in the European Convention on Human Rights, so that both rights have equal importance in democratic societies, so that when deciding which right to protect, a balance should be struck when giving priority to one or the other. Freedom of expression in Article 10 of the European Convention on Human Rights in certain situations and with an unlimited interpretation of that freedom may lead to a violation of other equally guaranteed rights in the European Convention, such as in this case the right to protection of honor and reputation as part of the right to respect for private life, which can significantly cause a violation of the physical and psychological integrity of the person, with the court assessing which right needs to be restricted in a democratic society such as ours.

The defendants in their response to the lawsuit and at the hearing referred to Article 10 of the European Convention for the Protection of Human Rights, emphasizing the freedom of their expression, but given that that freedom of expression may violate another equally guaranteed right, and Article 10 paragraph 2 in such cases provides the court with the opportunity to restrict freedom of expression, the court assessed whether the three conditions were met in order to restrict the defendants' freedom of expression. In doing so, as stated above, and by applying the so-called three-part test for assessing the restriction of freedom of speech, it found that such a restriction is prescribed by law, the restriction protects one of the interests listed in Article 10 paragraph 2, which is the right to respect for private and family life, and found that the restriction in this case is necessary to protect the interest that the court is protecting and that is necessary in a democratic society. Namely, the restriction is prescribed by law, as our Law on Obligations provides that every natural and legal person has the right to protect their personal rights, which are the right to honor and reputation. The court considered that this standard is sufficient, because such a personal right was protected by law by a legislative body as a democratically elected body, and in addition, it is harmonized with European legislation. The protection of family and private life, i.e. the reputation and rights of others, in accordance with Article 10 paragraph 2 of the European Convention, is a legitimate right to protection, which means that the restriction protects one of the legitimate goals and thirdly, the court found that such a restriction is necessary in our democratic society in order to protect that interest, all the more so since, as the court determined in the factual situation, the defendant as an association and further, even after this event,

continues to take actions that this court cannot determine are legitimate for achieving their goals, i.e. the defendants continue to present themselves as allegedly conducting investigative journalism to the public, publishing data with programs that are not journalistically designed, do not constitute journalistic reporting, nor are they subject to the rules for journalistic reporting.

For these reasons, the court appreciated, but found unfounded, the allegations of the defendants that they performed their work as journalists and that in a democratic society the right to report cannot be restricted when performing the journalistic profession, because as stated above, the defendant Association is not a journalistic association, nor can the members of that association, regardless of their profession, be treated as journalists and the performance of the work in that association cannot be considered as their journalistic profession. For these reasons, the court did not accept the allegations of the defendants that in this case, in accordance with Article 10 of the Law on Civil Liability for Insult and Defamation, there are grounds for excluding their liability.

According to Article 8, paragraph 1 of the Law on Civil Liability for Defamation and Defamation, a person is liable for defamation if, with the intention of harming the honor and reputation of another person, he states or transmits untrue facts that are harmful to his honor and reputation before a third party, and he knows or should have known that they are untrue. According to Article 9, paragraph 1 of the same Law, the defendant is obliged to prove the truth of the facts contained in the claim. In the specific case, which is established both in the factual situation and in the analysis of the evidence, the defendant, with the evidence proposed by him, did not prove the truth of the facts contained in the claim in relation to the plaintiffs in the specific broadcast that they broadcast to the public through a means of public information.

However, the court, in making its decision, took into account the fact that the defendants are part of a civil society, which is of essential importance and benefit to democracy, but, as long as they act within the framework of their purpose, and with respect for the rights and freedoms of other people, they are necessary for the development of democratic relations. However, when democratic rights turn into an abuse of democracy, such actions that violate other rights of citizens, which are also guaranteed and protected, must be limited in their freedom of expression.

Taking into account all of the above, the court ruled as in the dispositive portion and found the plaintiffs' claim to be fully founded, thus determining that the defendants are liable for defamation and ordering each of them to pay the plaintiffs, in accordance with Article 189 of the Law on Obligations, monetary compensation for the violation of their personal rights, as well as to satisfy the non-pecuniary damage, to publish the verdict in the manner and place specified in the dispositive portion.

The court made the decision on the costs of the procedure in accordance with Article 148 of the Civil Procedure Code, and given that the defendants lost the dispute, they are obliged to reimburse the plaintiffs for the costs of the procedure in the amount of 30,437.00 denars, of which 2,685.00 denars for the preparation of a lawsuit, 2,685.00 denars for the preparation of one written submission, 3,221 denars for the attendance of their attorneys at 5 hearings, or a total of 16,107.00 denars, a lawsuit fee of 480.00 denars, a decision fee of 486.00 denars, and an expert examination fee.

8,000.00 denars.

DECIDED IN THE BASIC COURT OF SKOPJE,

8. P5-zzpz on 24.10.2023.

LESSON: An appeal against this verdict is allowed within one month of its receipt, through this court to the Skopje Court of Appeal.

D.N. - of the plaintiffs' attorney, attorney Meri Mladenovska Georgievska bul.Partizanski odredi no. 18-2/2 Skopje

- to the attorney-in-fact of the defendants, lawyer Filip Medarski, Vasil Glavinov Street, No. Z/1-2, Skopje

Judge,